

Appl. No. 10/750,479
Amendment dated September 7, 2006
Reply to Office Action of June 16, 2006

REMARKS

Claims 1-28 are presented for the Examiner's consideration. Claim 13 is amended to clarify the claimed invention and to correct a typographical error.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

By way of Section 4 of the Office Action mailed June 16, 2006, claims 1-28 are ostensibly rejected under 35 U.S.C. § 102(b) as allegedly being anticipated, and thus unpatentable, over Kuske et al. (US 6,318,555) (hereinafter "Kuske"). The text of Section 4, however, appears to describe a 35 U.S.C. § 103(a) rejection. In addition, no grounds for rejection are given for claims 14-17 or 24. Finally, claims 2, 3, 5-7, 9, 18, 19, 21-23, and 25 are explicitly rejected under 35 U.S.C. § 103(a). These rejections are respectfully ~~traversed~~ to the extent that they may apply to the presently presented claims, and will be argued in the alternative where appropriate.

When asserting a Section 102 rejection, it is well established that there is no anticipation unless (1) all the same elements are (2) found in exactly the same situation and (3) are united in the same way to (4) perform the identical function. As now presented, independent claim 1 (and thus also its dependent claims) as now presented clearly contains at least one element not found in the cited Kuske reference (or the other art of record), namely, a package enclosing a single disposable absorbent article of the subject invention wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.14. The Examiner acknowledges this in Section 4. With at least this element lacking from the teaching of Kuske, the presented claims cannot be anticipated by Kuske. Therefore, the rejection of independent claim 1 (as well as its respective dependent claims) is respectfully requested to be withdrawn.

If, in fact, the Examiner intended to reject claim 1 and its dependent claims on the basis of 35 U.S.C. § 103(a), as indicated by the "obvious to one of ordinary skill in the art" language used by the Examiner, an alternative analysis applies. Applicants respectfully submit that the Examiner's rejection on the basis of 35 U.S.C. § 103(a) is improper and should be reversed.

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To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

First, there is no motivation or suggestion in Kuske for one of skill in the art to modify the Kuske disclosure to achieve the claimed invention, and the Examiner has not described any motivation or suggestion outside of Kuske, such as in general knowledge, to do so. The Examiner states that Kuske discusses compressing an absorbent article as the *In re Aller* "general condition" one skilled in the art may optimize through routine experimentation. What Kuske describes is compressing a stack of articles to make the stack smaller. One skilled in the art may experiment extensively with compressing a stack of articles, but that has nothing to do with the claimed invention. Kuske does not teach or suggest the claimed invention to one skilled in the art.

Second, the Examiner has not described in any manner how or even if there might be a reasonable expectation of success in modifying Kuske.

Third, all the claim limitations are not taught or suggested by the prior art reference. As stated above, any teachings or suggestions in Kuske are on completely different subject matters from that of the claimed invention.

Therefore, the rejection of independent claim 1 (as well as its respective dependent claims) is respectfully requested to be withdrawn.

By way of Section 4 of the Office Action mailed June 16, 2006, claim 13 is rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by and thus unpatentable over Kuske. Independent claim 13 has been amended to clarify the exclusive or close-ended nature of a relevant portion of the claim. Claim 13 (and thus also its dependent claims) includes at least one element not found in Kuske (or the other art of record), namely, the package of the subject invention consists of only one interior space large enough for the single disposable absorbent article. With at least this element lacking from the teaching of Kuske, the presented claims cannot be anticipated by Kuske. Moreover, the teaching in Kuske in regard to a single item package, and Kuske as a whole, teaches away from Applicants' now recited invention because Kuske is a multiple item package. Therefore, the rejection of independent claim 13 (as well as its respective dependent claims) is respectfully requested to be withdrawn.

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By way of the Office Action mailed June 16, 2006, claims 2, 3, 5-7, 9, 18, 19, 21-23, and 25 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Kuske. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

The Office Action recognizes that the Kuske reference does not disclose the rigidity of the walls of the package. However, the Office Action concludes that the teaching of Kuske would have been obvious to one of ordinary skill in the art to make such a different rigidity walled package, as set forth as applicants' invention. The applicants assert that such a reading of Kuske is not proper, and that Kuske could not be so modified to obtain applicants' invention, and that Kuske presently does not teach the applicants' subject invention. In particular, turning to Kuske at column 3, line 57 to column 4, line 58, and namely column 4, lines 16-36, it is clear that the packaging material taught in Kuske is a material with a homogenous rigidity. Much differently, the subject invention calls for the package being composed of a first piece of material and a second piece of material, where one of the pieces of material (i.e., that is the entire piece of material, although it need not have the same rigidity but the entire piece would have a characteristic rigidity) being more rigid than the other piece of material. Thus, for the subject invention, it is the entire piece of material that is more rigid than the other piece of material. Differently, the Kuske reference only teaches a uniform rigidity for the entire packaging. And while the packaging may have a weakened area 74 to permit access, as noted in the Office Action, such does not speak to the entire piece of material having a different rigidity but rather such just teaches a piece of material having a weakened line in it. To teach such a multi-rigidity container based on Kuske and the general state of the art, would be contrary to the claimed teaching in Kuske. For at least these reasons, claims 2, 3, 5-7, 9, 18, 19, 21-23, and 25 cannot be rendered obvious by Kuske. Thus, the rejection of these claims is respectfully requested to be withdrawn.

Additionally, as relates to the dependent claims, they recite features not taught or suggested by Kuske. For these additional reasons, such claims cannot be rendered obvious by Kuske.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

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Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

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Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I, Mary L. Marchant hereby certify that on September 7, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.


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